



Utility Franchises

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Utility Franchises

Reference Number: MTAS-570

Private Utility Franchise

Privately owned and operated utilities are subject to regulation by the Tennessee Public Utility Commission. A franchise granted by a city to such a utility must first be approved by the commission. The commission may hear appeals on regulatory measures imposed by cities. The commission may not issue a certificate of convenience and necessity to a second company for service in the same area unless it first determines that existing services are inadequate. A city may declare by ordinance that public necessity requires a competing utility. T.C.A. § 65-4-107, T.C.A. § 65-4-108, T.C.A. §§ 65-4-201, *et seq.*

Consent to Transfer of Franchise

No public utility may acquire the franchises or property of another utility company serving a city without the city's "permission and consent, expressed officially in writing ... and then only upon such terms and conditions as the said municipal government may prescribe." T.C.A. § 6-54-109.

Power Lines and Pipelines in Rights of Way

Electricity, gas, and oil suppliers are authorized to place lines, wires, and pipes as needed along city streets, lanes, and alleys "after having first obtained permission from the governing authorities thereof" (commonly referred to as a "franchise"). Excavations must be made "in such manner as to give the least inconvenience to the public, and shall be replaced with all possible speed by and at the expense of the corporation in as substantial manner as found before being excavated." T.C.A. § 65-22-103.

Telephone Lines

T.C.A. § 65-21-101 provides phone companies the following privileges: Telegraph and telephone corporations may construct a telegraph or telephone line and erect the necessary fixtures along, over, or under the line of any public highway or the streets of any town or city; across, over, or under rivers or any land belonging to the state; or along, across, or under county roads and also the lands of private individuals. This may be done under the general law authorizing condemnation of right-of-way easements for works of internal improvement, as set forth in T.C.A. § Title 29, Chapter 16, but the ordinary use of these public highways, streets, or county roads may not be obstructed or the navigation of waters impeded.

T.C.A. § 65-21-103 gives municipalities the following powers regarding phone companies: "While any village or city within which said line may be constructed shall have all reasonable police powers to regulate the construction, maintenance, or operation of said line within its limits ... yet no village, town, or city shall have the right to prevent said company from constructing, maintaining, and operating said line within said village, town, or city, so long as said line is being constructed, maintained, or operated within said village, town, or city, in accordance with said reasonable police regulations."

Authority to Offer Telecommunications, Video, Internet, and Like Services

A municipal electric system is permitted to provide telephone, telegraph, and telecommunications services; dedicate a reasonable portion of the electric plant to telecommunications services; and lend funds to provide for working capital. The funds must be lent at not less than the highest rate then earned by the municipality on invested electric plant funds. T.C.A. §§ 7-52-401, *et seq.*

The system must make tax equivalent payments relative to telecommunications services the same as for electrical services. In addition, the municipal system may not provide telecommunications services in the area of an existing phone cooperative with fewer than 100,000 lines and is subject to regulation by the Tennessee Public Utility Commission. T.C.A. §§ 7-52-401, *et seq.*

An amendment to the law now allows electric systems to provide cable TV, two-way video transmission, Internet services, and other like systems. Municipalities may not do this in areas where a private cable provider serves 6,000 or fewer customers and must file a business plan with the comptroller's office prior to beginning operation. T.C.A. § 7-52-601.

Under certain conditions, a municipality may enter into joint ventures to provide telecommunications and cable TV services. T.C.A. § 7-52-103(c)-(d).

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

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